

assistants. They became so employed by the government by virtue of letters of offer issued by the government to them and accepted by them.

The Public Services Tribunal ('the tribunal') handed down an award on 12 August 1981 following a complaint of anomaly by one G Sundaraju and 29 others. The respondents were not among them.

After the award the government implemented the recommendation of the tribunal in the first part of the award to Sundaraju and his 29 colleagues who were appointed before 1 January 1976 but did not implement the second part of the award to the respondents who were appointed after 1 January 1978.

The learned judge relied on s 15(1) of the Public Services Tribunal Act 1977 ('the Act') and said that the government was bound to implement the tribunal's recommendation on the respondents. We are unable to agree with the learned judge on his interpretation of s 15(1) of the Act. Apart from the fact that the second part of the tribunal's award should be regarded, in so far as concerned the respondents, only as an observation of the tribunal, the respondents are in our opinion bound by their acceptance of the offers of appointment and any change in their conditions of service or scheme of salary should be negotiated with the government. We do not think it is proper for the court to interfere with the contractual right between the respondents and the government.

We also do not agree that s 15(5) of the Public Services Tribunal Act should be applied in this case because s 15(5) of the Act only requires the application of the award to other public officers similarly situated as the complainant which resulted in the award.

Finally the respondents came to the court asking for declarations that they be given the B3 salary scale of the Cabinet Committee Report with effect from the date of employment and that they are entitled to the relief in the Public Services Tribunal award. Issuing of the declaration is discretionary and in a case like this where the claims concerned conditions of service and salary scales in the government service, the court should not rush into making a declaration. The court should not usurp the functions of the tribunal or the government in matters of salary scales and conditions of service.

The appeal is accordingly allowed with costs.

Appeal allowed.

Solicitors: Genga, Maha, Wong & Co.

Reported by Prof Ahmad Ibrahim

A Mukhtiar Singh Gill & Ors v Atma Singh Gill

HIGH COURT (SEREMBAN) – CIVIL SUIT NO 22-97-86
MUSTAPHA HUSSAIN J
3 SEPTEMBER 1988

B *Civil Procedure – Bill of costs – Taxation – Getting-up fees – Whether allowable in interlocutory proceedings – Rules of the High Court 1980, O 59 Part IV item 26 – Courts of Judicature Act 1964, s 3*

Words and Phrases – 'Cause' – Rules of the High Court 1980, O 59 Part IV item 26

C The plaintiffs applied for and were granted an interim injunction to restrain the defendant from holding the election of office-bearers of a Sikh temple of which the defendant was the pro tempore chairman. The defendant then applied to set aside the interim injunction and the court subsequently allowed the application, with costs to be taxed. At the review of taxation before the senior assistant registrar, the plaintiffs disputed the item on getting-up fees, contending that since the suit was not fixed for trial and the hearing confined to applications in interlocutory proceedings, getting-up fees cannot be allowed in principle. The plaintiffs submitted that the word 'cause' in item 26 under the scale is confined to original proceedings and does not cover any interlocutory proceedings.

Held, dismissing the application:

E (1) Reading the definitions of 'cause', 'matter' and 'action' in s 3 of the Courts of Judicature Act 1964, the word 'cause' includes any action in a civil proceeding including applications at any stage of a proceeding. It is abundantly clear that the interlocutory application by the defendant to set aside the injunction comes within the meaning of 'cause'.

F (2) Reading the headnote to Part IV under O 59 of the Rules of the High Court 1980, it is also clear that item 26 means 'preparation for trial or hearing' whether in open court or otherwise. The defendant is entitled to the getting-up fees.

Legislation referred to

Courts of Judicature Act 1964 s 3

G Rules of the High Court 1980 O 59 Part IV items 26 & 27, Part X para 1(2)

Leow Shin Fong for the plaintiffs.

Joginder Singh for the defendant.

Cur Adv Vult

H **Mustapha Hussain J:** The five plaintiffs herein had filed a writ on 19 February 1986 and at the same time filed a summons-in-chambers applying for an interim injunction to restrain the defendant from proceeding to hold and conduct the annual general meeting of the devotees of the Sikh Temple, Seremban, for the purpose of electing office-bearers. The defendant was at the material time the pro tempore chairman who was to conduct the election of office-bearers.

I The interim injunction was granted on 22 February 1986, stopping the election of office-bearers. This was followed by an application filed by the defendant on 30 March 1986 (encl 10) to set aside the interim injunction

and after some very lengthy arguments, the court allowed the defendant's application to dissolve the interim injunction, with costs to be taxed.

Then the bill of costs went before the SAR on 4 November 1986 for taxation. The total amount of the bill was \$12,022.50 but the SAR taxed off \$5,030.50. With the allocatur etc the total costs now stand at \$7,484.05.

The plaintiffs were not happy with item 1 of the bill of costs (item 26 under the scale) which is for 'instruction to defend' and item 3 (item 43 under the scale) for 'entering appearance'. The plaintiffs applied for a review to the SAR (encl 29A).

However, at the review before the SAR on 27 January 1987, item 56A for 'getting-up' became the fresh issue, the other two items as in encl 29A having been disposed of.

Item 56A Date: 18 April Scale item 26

Instruction to apply to court to set aside the injunction obtained on 22 February 1986 against the defendant, considering the facts and law, preparing summons-in-chambers and supporting affidavit and other general case and conduct of the proceedings \$10,000

The defendant had billed \$10,000 but the SAR taxed off \$4,000. This item is what is generally known as getting-up fees, to which the plaintiffs have to pay \$6,000. The plaintiffs, on principle, say that getting-up fees are allowable if there had been a trial or the matter had been set down for hearing. Since this suit was not fixed for trial and the hearing was confined to applications in interlocutory proceedings, getting-up fees cannot be allowed in principle.

Now, item 26 of Part IV of O 59 of the Rules of the High Court 1980 reads:

Part IV

Preparation for trial or hearing, whether in open court or otherwise

Item	Instructions for trial or hearing of any cause or matter, whatever the mode of trial or hearing	Discretionary
26		

Note to items 26 and 27 -

These items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including -

- (a) taking instructions to sue, defend, counter-claim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act or claim in a reference under Order 70 rule 39;
- (b) considering the facts and law;
- (c) attending on and corresponding with client;
- (d) interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence;

- (e) arranging to obtain reports or advice from experts and plans, photographs and models;
- (f) making search in a government office and elsewhere for relevant documents;
- (g) inspecting any property or place material to the proceedings;
- (h) perusing pleadings, affidavits and other relevant documents;
- (i) where the cause or matter does not proceed to trial or hearing, work done in connection with the negotiations of a settlement; and
- (j) the general care and conduct of the proceedings.

It was contended by the plaintiffs that the word 'cause' in item 26 is confined to original proceedings and it does not cover the interlocutory proceedings which were before this court.

Section 3 of the Courts of Judicature Act 1964 defines 'cause', 'matter' and 'action' as follows:

'cause' includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding;

'matter' includes every proceeding in court not in a cause;

'action' means a civil proceeding commenced by writ or in such other manner as is prescribed by rules of court, but does not include a criminal proceeding;

It can be clearly seen that 'cause' also includes 'action' and 'action' means civil proceeding commenced by writ or in such other manner as is prescribed by the Rules. 'Proceeding' clearly includes an application at any stage of a proceeding.

Therefore the word 'cause' includes any action in a civil proceeding including applications at any stage of a proceeding. It is abundantly clear beyond peradventure that the interlocutory application by the defendant to set aside the injunction comes within the meaning of 'cause'.

The question now is whether the successful defendant ought to be allowed the getting-up fees under item 26. Reading the headnote to Part IV under O 59 of the Rules of the High Court 1980, it is also clear that it means 'preparation for trial or hearing' whether in open court or otherwise.

The notes appended to items 26 and 27 clarify in detail matters like taking instructions, considering facts and law, attending on and interviewing clients, perusing pleadings, affidavits etc.

The case before the court, the injunction and its setting aside, is quite a complex matter. This is not a simple case.

Reading the wording of O 59, particulars of item 26 and the notes appended to items 26 and 27 together with Part X para 1(2), it is crystal clear that the defendant is entitled to the getting-up fees.

The application by the plaintiffs for further review of the bill of costs is dismissed with costs.

Order accordingly.

Solicitors: *Arifin & Partners; Joginder Singh & Co.*

Reported by *Ng Sheau Jiu*

Wong Leong Sing & Anor v Wong Tan Ann

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO F57 OF 1980
LC VOHRAH J
29 AUGUST 1988

Land Law – Application for delivery of vacant possession and damages – Dispute about purchase of land from registered owner's deceased father – Land not transferred – Restriction in interest prohibiting disposal without approval of authority – Restriction operative for ten years – Whether defendant is beneficial owner or licensee – Plaintiffs are transferees of land – Allegation of fraud and conspiracy in land transfer – Contracts Act 1950, s 24

The plaintiffs' claim is for delivery of vacant possession and damages in respect of land identified as QT(M) 497 Lot 546 in the Mukim of Kuala Lumpur, Selangor ('the said land'), of which they became registered owners. The defendant alleges fraud and conspiracy on the plaintiffs' part in taking a transfer of the title to the said land and in his counterclaim prays for delivery of the title to him on the ground that he is the beneficial owner.

The defendant and one Wong Chin Kuang ('the deceased'), the father of the plaintiffs, were relatives. The deceased's daughter Wong Choh Yuen (PW5) who is the plaintiffs' elder sister, whilst residing in Tampin with her husband in 1958, applied for the alienation to her of the said land for a dwelling-house site. Her application was approved on the terms and conditions set out in the notice, one of which prevented her from transferring or otherwise disposing of the said land for a period of ten years from the date of the registration of the approved application without the approval of the collector. In 1959, the deceased entered into an arrangement with the defendant whereby the defendant caused a house to be built on the said land and entered into occupation thereof. In 1966 the defendant allowed PW5 to build a house on the said land. Subsequently, PW5's approved application was replaced by a document of qualified title QT(M) No 497 which was registered and issued to her on 12 March 1968 whereupon she became the registered proprietor of the said land. On 17 November 1977, PW5 transferred the said land to her younger brothers, the plaintiffs. On 10 February 1979, the plaintiffs sent the defendant a notice to quit the said land.

The learned judge was requested to consider the following issues, namely: (a) whether the defendant is a licensee at will of the said land; (b) whether the defendant is the beneficial owner of the said land; and (c) whether the plaintiffs registered as proprietors of the said land are in fact trustees for the defendant.

A Held, allowing the plaintiffs' claim for delivery of vacant possession and dismissing the defendant's counterclaim with costs:

(1) From the facts, the learned judge found on a balance of probabilities that the defendant has not established that he originally took possession of the said land as purchaser as alleged in his pleadings.

(2) As a matter of law, having regard to the defendant's version of the sale of the said land by the deceased, even if he had the authority to do so on behalf of the registered owner, the sale would have been unlawful by reason of s 24 of the Contracts Act 1950 as being of such a nature that if permitted would defeat the provisions of any law and it is therefore by reason of that section void.

C (3) At the time when the alleged sale was to have taken place, the restrictions in interest appeared in the notice of approval of application that the land shall not be transferred, nor shall it be leased, tenanted, charged or otherwise disposed of, without the prior written approval of the Collector of Land Revenue, and the restriction in interest shall cease to be operative after the expiration of ten years from the date of the registration of the title. As the restriction was in operation at the material time and as no prior written approval of the Collector of Land Revenue was shown to have been obtained, the alleged sale of the said land was illegal and of no effect. Accordingly, the defendant was a licensee at will of the said land.

D (4) The learned judge ordered that the defendant and those claiming under him deliver up vacant possession of the said land within three months thereof. No damages were awarded to the plaintiffs as they were mere transferees of the said land. Further, the transfer to the plaintiffs did not amount to an exercise which was fraudulent or an act 'to cheat and deprive' the defendant as alleged by him.

E Case referred to

1 *Hee Cheng v Krishnan* [1955] MLJ 103 (refd)

F

Legislation referred to
Contracts Act 1950 s 24

JG Bernatt for the plaintiffs.

Paramjit Singh Gill for the defendant.

Cur Adv Vult

G

LC Vohrah J: The plaintiffs' claim is for delivery of vacant possession and damages in respect of land identified as QT(M) 497 Lot 546 in the Mukim of Kuala Lumpur, Selangor ('the said land') of which they became registered owners. The defendant in his statement of defence alleges fraud and conspiracy on their part in taking a transfer of the title to the said land and in his counterclaim prays for delivery of the title to him on the ground that he is the beneficial owner.

H I find the following facts either admitted or proved. The defendant and one Wong Chin Kuang ('the deceased'), the father of the plaintiffs, were relatives and in 1959 each of them worked as a cook in an English home. At that time the deceased was staying at house No 54, Sungei Way New Village on Lot No 547 which is adjacent to the said land. The deceased's daughter Wong Choh Yuen (PW5) who is elder to the plaintiffs, in 1958, two years after her marriage and whilst residing in Tam-